1945.

File No. Public Health II/45

Legal Department

B **BRANCH**

Subject:—

Rules and Notifications under the Public Health

(Emergency Provision) Ordinance.

1944

5/1945

File No. Public Health II/45

344-B

Office of the R.L.A.

A revised draft is sent herewith.

2. Under section 3(39) of the General Clauses Act, 1897, "person" shall include any company or association or body of individuals, whether incorporated or not.

There is nothing repugnant in the subject or context of the Public Health (Emergency Provisions) Ordinance, 1944, to holding that the Kirkee Cantonment Board which has been constituted under the Cantonment Act, 1924 and is a body corporate (vide section 11 of the Act) can be legally authorised to take or complete measures under sub-section (2) of section 3 of the Ordinance.

Sub-section (3) of section 3 of the Ordinance Provides that all charges and expenses incurred by a person authorised under sub-section (2) shall, except to such extent, if any, as the appropriate Government may direct to be paid out of its revenue, be paid out of the funds of the local authority to whom an order under sub-section (1) is issued. The Kirkee Cantonment Board cannot therefore be called upon to pay the charges and expenses incurred by it; they will have to be met by the Village Panchayat of Aundh, unless Government directs that they be paid out of the Provincial Revenues.

Id/- P.N.M.

16/5/45.

Remembrancer of Legal Affairs.

16/7

K.S.R.
16/7 U.R. to G.D. No. 3779, dated the 16th May 1945.

MSR.

Office of the R.L.A.

The proposed rules are neither suitable nor consistent with the Scheme of the Public Health (Emergency Provisions) Ordinance 1944 (Ordinance No. XXI of 1944), since they are not framed on general lines and many of them relate to matters covered by the substantive provisions of the ordinance.

2. There is no provision in the ordinance for the appointment of an Emergency Officer or the authorisation of an officer for all the purposes set out in the G.D. draft (pages 33-36).

3. The scheme of the ordiance is that orders may be issued by Government to local authorities under section 3 requiring them to take certain measures. Under sub-section (2) of section 3 a person could be authorised to take all the measures that a local authority on having been required so to do, has failed to take. Government could appoint staff only under the provisions of section 4: such appointments could be made for the purposes of sections 3(2), 5(2)(d), 6 and 9 (2) (b). But the essence of the scheme is that Orders should be issued to local authorities, and it appears therefore that the best course would be to have model orders drawn up which could be issued to them whenever necessary.

4. Rules can of course be made under section 11, but they must fit into the general scheme of the Ordinance and not attempt to deal with matters that have already been fully dealt with in the other sections. Thus, rules may among other things be made:-

(a) prescribing under sub-section (a) of section 11 the particular diseases against which precautions are considered necessary - i.e. plague, cholera and small pox;

(b) prohibiting, during the prevalance of any prescribed disease, under sub-section (b) of section 11 certain actions e.g. the sale of overripe fruit, the pollution of sources of water, the use of pollutted water, etc, in the case of cholera,

(c) laying down the manner in which segregation may be carried out,

(d) prescribing that all directions issued by local authority pursuant to an order made under sub-section (1) of section 3 shall be obeyed by every person resident within or entering the local area concerned and prescribed the penalty for noncompliance.

It is quite unnecessary to frame rules for matters which can be dealt with by orders issued under one section or another Ordinance.

Id/- P.N.M.
29/6/45.
Remembrancer of Legal Affairs.

U.R. to G.D., No. 4872, dated the 29th June 1945.

MSR.
13/7.

Office of the R.L.A.

A revised draft of the model orders to be issued under section 3 of the Public Health (Emergency Provisions) Ordinance, 1944, and a revised draft of the rules to be issued under section 11 of the same Ordinance are sent herewith.

2. Revised draft orders.- Section 3 of the Ordinance empowers Government to require any local authority to take specified health measures within such period as may be specified in the order. The preamble to the draft order therefore provides for specifying the requisite period. The General Department draft order (10) provides for carrying out other anti-epidemic measures as may be laid down from time to time. This clause has been omitted from the revised draft since under section 3 of the Ordinance it is necessary to specify the measures which a local authority should take.

3. Revised draft rules.- (i) Revised rule 4.- It is necessary to specify the authority who should direct inoculation and vaccination. The revised rule provides accordingly. Before issue of the rules the General Department should specify the authority who should issue such direction.

(ii) Revised rule 7.- This rule similarly provides for the authority who should specify the place at which and the manner in which infected material should be disposed of, washed or deposited.

(iii) The General Department draft rule 7 has been omitted as it is likely to be challenged on the ground that it is not covered by any provision in the Ordinance.

(iv) Revised rule 9.- This rule also provides for specifying the authority who should specify the place at w hich and the manner in which dead bodies of persons dying of any of the prescribed diseases should be disposed of.

(v) Revised rule 13.- The provision in the General Department draft rule 13 regarding payment of salaries and allowances of the members of the medical and public helath establishment by a local authority to whom the services are transferred is omitted, since it is doubtful whethe-r such a provisions would be covered by the provisions of section 11 of the Ordinance.

4. It is true as pointed out by General Department at page 59 ante that under clause (d) of sub-section (2) of section 5 of the Ordinance power is given to the Government to authorise persons to inspect, superintend and control the operations of a local authority in regard to any purpose of the. Ordinance and the person so authorised can see that the local authority carries out the instructions issued under section 3 and complies with the provision of the rules issued under section 11, but the power given to Government to authorise such persons under section 5 can be exercised by it only on its assuming superintendence of the medical and public health services of the local authority and not in any ordinary circumstances. So long therefore as Government has not assumed superintendence as provided for in sub-section (1) of section 5 of the Ordinance it would not be open to it to appoint any officer for the purpose in view.

Id/- P.N.M.

7/12/45.

Remembrancer of Legal Affairs.

to G.D., No. 9160, dated the 7th December 1945.